

RECORDING REQUESTED BY:

UNION PACIFIC RAILROAD COMPANY

WHEN RECORDED, MAIL TO:

Ms. Barbara J. Cook, P.E., Chief
 Northern California-Coastal Cleanup Operations Branch
 Site Mitigation program
 Department of Toxic Substances Control
 700 Heinz Avenue, Suite 200
 Berkeley, California 94710

1998-00036706

Recorded By:
 UNION PACIFIC

Official Records
 County of Solano
 Robert Blechschmidt
 Assessor/Recorder

15:21 15-MAY-98 AR82 7 Pgs

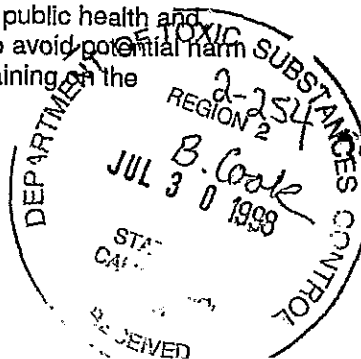
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 Check \$ 25.00
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SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY
 SOUTHERN PACIFIC SUISUN MARSH DERAILMENT SITE

This Covenant and Agreement ("Covenant") is made on the 21 day of April, 1998, by Union Pacific Railroad Company, successor by merger to Southern Pacific Transportation Company ("Covenantor"), the owner of record of certain property situated in Solano County, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property") and by the California Department of Toxic Substances Control ("Department"), with reference to the following facts:

- A. The Property contains hazardous substances.
- B. Description of Facts.
- B.1. On March 19, 1969, a southbound train with 40 railcars derailed at approximately 1:00 a.m. at the Site. Two tanker cars, each containing approximately 90 tons of white phosphorus were ruptured during the derailment. Upon exposure to the air, the phosphorus ignited, and burned for over four hours before fire fighters extinguished the fire. Twenty-eight hours after the derailment, a Bureau of Explosives, Association of American Railroads inspector reported that the tank cars were on their sides, two-thirds buried in mud. Subsequently, the tank cars and a third box car containing corn were buried at the Site, capped with concrete, and surrounded by a chain-link fence within the railroad right-of-way.
- B.2. The final removal action, which consisted of replacement of the cap, has been implemented at the Site. Implementation of the removal action eliminates any significant risks to human health or the environment. The concrete cap covering the Site was replaced by a multi-media cap which provides a more flexible surface that will not be impacted by minor subsidence of the buried tank cars.
- B.3. If exposed to air, elemental phosphorus will ignite spontaneously at a temperature of 86 degrees Fahrenheit or below. Elemental phosphorus tends to spatter when burning and application of a water spray to control the fire would aggravate this spattering effect. In addition, during burning, elemental phosphorus generates copious quantities of smoke which is potentially irritating, but not considered toxic. Oxidized elemental phosphorus generates phosphine gas, which can collect in confined air spaces and spontaneously ignite in the atmosphere.
- C. Covenantor desires and intends that in order to protect the present and future public health and safety and the environment, the Property shall be used in such a manner as to avoid potential harm to persons or property which may result from any hazardous substances remaining on the Property.



ARTICLE I GENERAL PROVISIONS

1.1 Provisions to Run With the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions, (collectively referred to as "Restrictions"), upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property; and shall apply to and bind the respective successors in interest thereof. Each and all of the restrictions are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property. Each and all of the Restrictions are imposed pursuant to Sections 25355.5 and 25356.1 of the Health and Safety Code and run with the land pursuant to Section 25355.5. Each and all of the Restrictions are enforceable by the Department.

1.2 Concurrence of Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of future Owners and Occupants and that their interest in the Property shall be subject to the Restrictions contained herein.

1.3 Incorporation Into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated by reference in each and all deeds and leases of any portion of the Property.

ARTICLE II DEFINITIONS

2.1 Cap. "Cap" shall mean the multimedia protective cover used to isolate the buried tank cars on the Property from human or environmental exposure. The 6-layer multimedia Cap consists of (listed in order of placement): (1) a high density polyethylene (HDPE) geogrid; (2) an angular gravel layer; (3) a woven geotextile fabric; (4) galvanized chain-link mesh fencing; (5) warning tape; and (6) a three-foot thick soil cover vegetated with native species.

2.2 Department. "Department" shall mean the California Environmental Protection Agency, Department of Toxic Substances Control and shall include its successor agencies, if any. Unless otherwise specified, approval authority for any exceptions to the Restrictions of Section 3 below, shall rest with the Chief, Northern California Coastal Cleanup Operations Branch or his/her successor.

2.3 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Property.

2.4 Occupants. "Occupants" shall mean those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Property.

2.5 Owner. "Owner" shall mean the Covenantor or its successors in interest, including heirs, and assigns who hold title to all or any portion of the Property.

ARTICLE III DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

3.1 Restriction on Use. Covenantor promises to restrict the use of the Property as follows:

3.1.1 The Property shall not be used in such a way that will damage or compromise the integrity of the Cap or fence.

- 3.1.2 Nothing shall be constructed on the Cap without the Department's prior written consent.
- 3.1.3 No trackage or right-of-way construction shall be placed upon the Property.
- 3.1.4 Any proposed alteration of the Cap shall require prior written approval by the Department.
- 3.1.5 No drilling for drinking water shall occur on the Property.
- 3.1.6 Prior to sale, lease, or rental, the Owner(s) shall give written notice to purchasers, lessee, and tenants stating that there is residual contamination specified in California Health and Safety Code, Division 20, Section 25359.7(a).
- 3.1.7 Residential development for human habitation shall not be permitted on the Property.
- 3.1.8 Hospitals or health clinics shall not be permitted on the Property.
- 3.1.9 Day-care centers for either children or senior citizens shall not be permitted on the Property.
- 3.1.10 Schools for children under 21 years of age shall not be permitted on the Property.
- 3.1.11 Subdivision of the Property is forbidden, except as allowed under Health and Safety Code, Division 20, Section 25232(a)(2) and (b)(2).
- 3.1.12 No raising of food (e.g., livestock, food crops, etc.) shall be permitted on the Property.

3.2 Conveyance of Property. The Owner or Owners shall provide a thirty (30) day advance notice to the Department of any sale, lease (except residential tenants), or other conveyance of the Property or an interest in the Property to a third person. The Department shall not, by reasons of the Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property except as otherwise specifically provided by law, by administrative order, or by this Covenant.

This Covenant shall be binding upon Covenantor and other owners only during such time as they remain Owners and only to the portion of Property of which they are an Owner, provided, however, that an Owner shall remain liable for a breach of the Covenant with respect to its ownership of Property occurring during the period of its ownership.

3.3 Enforcement. Failure of the Owner to comply with any of the requirements, as set forth in paragraph 3.1 shall be grounds for the Department, by reason of the Covenant, to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the Department to file civil and criminal actions against the Owner as provided by law.

3.4 Notice in Agreements. All Owners and Occupants shall execute a written instrument which shall accompany all purchase, lease, sublease, or rental agreements (except for residential tenants) relating to the Property. The instrument shall contain the following statement:

"The land described herein contains hazardous substances. Such condition renders the land and the owner, lessee, or other possessor of the land subject to requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the Health and Safety Code. This statement is not a declaration that a hazard exists."

ARTICLE IV
VARIANCE AND TERMINATION

4.1 Variance. Any Owner or, with the Owner's consent, any Occupant of the Property or any portion thereof may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code Section 25233.

4.2 Termination. Any Owner or, with the Owner's consent, an Occupant of the Property or a portion thereof may apply to the Department for termination of the Restrictions as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code Section 25234.

4.3 Term. Unless terminated in accordance with paragraph 4.2 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V
MISCELLANEOUS

5.1 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public or for any purpose whatsoever.

5.2 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served, or (2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

TO: COVENANTOR:
Union Pacific Railroad Company
1416 Dodge Street
Omaha, NE 68179
Attn: Assistant Vice-President - Real Estate

Copy to:

Harry Patterson
Union Pacific Railroad Company
1416 Dodge Street
Omaha, NE 68179

Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710
Attn: Site Mitigation Branch Chief

5.3 Partial Invalidity. If any portion of the Restrictions set forth herein or terms is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.


5.4 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.5 Recordation. This instrument shall be executed by the Covenantor and by the Department. This instrument shall be recorded by the Covenantor in the County of San Francisco within ten (10) days of the date of execution.

5.6 References. All references to Code sections include successor provisions.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

UNION PACIFIC RAILROAD COMPANY


R. D. Uhrich
Assistant Vice President - Real Estate
Union Pacific Railroad Company

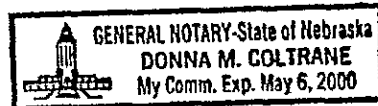
3/23/98
Date

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

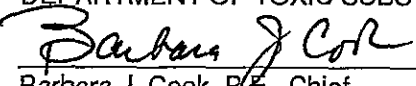
On this 23rd day of March, in the year 1998, before me, Donna M. Coltrane personally appeared R. David Uhrich, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to in the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Donna M. Coltrane



DEPARTMENT OF TOXIC SUBSTANCES CONTROL


Barbara J. Cook, P.E., Chief
North Coast Cleanup Operations Branch
Site Mitigation Program
Department of Toxic Substances Control

4/21/98
Date

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

MARY ANN HARREL, NOTARY PUBLIC

On this 21st day of April, in the year 1998, before me, _____, personally appeared BARBARA J. COOK, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to in the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Mary Ann Harrel

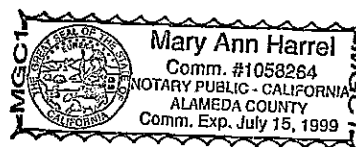


EXHIBIT "A"

REAL PROPERTY ON THE UNINCORPORATED TERRITORY OF SOLANO COUNTY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 1: A PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED TO "THE TEAL CLUB", A CALIFORNIA NON-PROFIT MUTUAL BENEFIT CORPORATION, DATED DECEMBER 29, 1987, AND RECORDED JANUARY 13, 1988, IN BOOK 3 OF OFFICIAL RECORDS, AT PAGE 3709, SOLANO COUNTY RECORDS, DESCRIBED AS FOLLOWS:

COMMENCING AT A STANDARD CITY OF FAIRFIELD DISK MONUMENT AT THE CENTERLINE INTERSECTION OF CHADBOURNE ROAD (84 FEET WIDE) AND CORDELIA ROAD (50 FEET WIDE), AS SAID ROADS ARE SHOWN ON THAT CERTAIN MAP ENTITLED "RECORD OF SURVEY OF THE MONUMENTATION OF THE STREET CENTERLINES AS ESTABLISHED BY THE CHADBOURNE -BECK CORDELIA ASSESSMENT DISTRICT". ETC., FILED JANUARY 5, 1983 IN BOOK 16 OF SURVEYS, AT PAGE 14, SOLANO COUNTY RECORDS, (THE BEARING OF THE MONUMENT LINE ALONG CHADBOURNE ROAD, NORTHWESTERLY TO THE EXISTING MONUMENT AT MAXWELL WAY, AS SAID MONUMENTS ARE SHOWN ON SAID MAP BEING TAKEN AS NORTH 0° 09' 49" WEST AS THE BASIS OF BEARINGS USED FOR THE PURPOSE OF PREPARING THIS DESCRIPTION); THENCE SOUTHEASTERLY FROM SAID POINT OF COMMENCEMENT SOUTH 0° 26' 20" EAST, 5804.69 FEET; THENCE SOUTH 7° 33' 08" EAST, 6594.175 FEET; THENCE SOUTH 5° 56' 02" WEST, 4183.44 FEET TO THE CENTER OF A BRASS DISK STAMPED "SOLANO COUNTY B.M."; LOCATED ON THE WESTERN EDGE OF CHADBOURNE ROAD APPROXIMATELY 206 FEET, MORE OR LESS, NORTHWESTERLY FROM THE NORTHWESTERN CORNER OF A CONCRETE BRIDGE CROSSING "WELLS SLOUGH"; THENCE SOUTH 21° 20' 25" EAST, 205.78 FEET TO THE CENTERLINE OF A BRASS DISK SET IN THE NORTHWESTERN CORNER OF THE CONCRETE BRIDGE DECK CROSSING WELLS SLOUGH; THENCE SOUTH 47° 15' 38" EAST, 2240.34 FEET, TO A POINT ON THE NORTHWESTERN LINE OF THE SOUTHERN PACIFIC TRANSPORTATION COMPANY RIGHT-OF-WAY (100 FEET WIDE), AND THE ACTUAL POINT OF BEGINNING OF THE PARCEL OF LAND TO BE DESCRIBED; RUNNING THENCE ALONG THE LAST SAID RAILROAD RIGHT-OF-WAY, SOUTH 22° 34' 49" WEST, 73.60 FEET; THENCE NORTH 66° 02' 55" WEST, 29.13 FEET; THENCE NORTH 23° 41' 53" EAST, 72.87 FEET TO A LINE DRAWN NORTH 67° 31' 37" WEST FROM THE ACTUAL POINT OF BEGINNING; THENCE SOUTH 67° 31' 37" EAST, 27.70 FEET TO THE ACTUAL POINT OF BEGINNING;

AND CONTAINING AN AREA OF 2,080 SQUARE FEET, MORE OR LESS.

PARCEL 2: A PORTION OF THAT CERTAIN PARCEL(LAND BEING A PORTION OF SECTION FIFTEEN (15), TWENTY TWO (22), TWENTY SEVEN (27), TWENTY EIGHT (28) AND THIRTY THREE (33), IN TOWNSHIP NUMBER FOUR (4) NORTH, RANGE NUMBER TWO (2) WEST, OF THE MOUNT DIABLO BASE MERIDIAN AS DESCRIBED IN THE DEED TO THE NORTHERN RAILWAY COMPANY(ALSO KNOWN AS THE SOUTHERN PACIFIC TRANSPORTATION COMPANY), A CORPORATION, DATED MAY 31, 1878, IN BOOK 68 OF OFFICIAL RECORDS AT PAGE 420, SOLANO COUNTY RECORDS, DESCRIBED AS FOLLOWS:

COMMENCING AT A STANDARD CITY OF FAIRFIELD DISK MONUMENT AT THE CENTERLINE INTERSECTION OF CHADBOURNE ROAD (84 FEET WIDE) AND CORDELIA ROAD (50 FEET WIDE), AS SAID ROADS ARE SHOWN ON THAT CERTAIN MAP ENTITLED "RECORD OF SURVEY OF THE MONUMENTATION OF THE STREET CENTERLINES AS ESTABLISHED BY THE CHADBOURNE -BECK CORDELIA ASSESSMENT DISTRICT". ETC., FILED JANUARY 5, 1983 IN BOOK 16 OF SURVEYS, AT PAGE 14, SOLANO COUNTY RECORDS, (THE BEARING OF THE MONUMENT LINE ALONG CHADBOURNE ROAD, NORTHWESTERLY TO THE EXISTING MONUMENT AT MAXWELL WAY, AS SAID MONUMENTS ARE SHOWN ON SAID MAP BEING TAKEN AS NORTH 0° 09' 49" WEST AS THE BASIS OF BEARINGS USED FOR THE PURPOSE OF PREPARING THIS DESCRIPTION); THENCE SOUTHEASTERLY FROM SAID POINT OF COMMENCEMENT SOUTH 0° 26' 20" EAST, 5804.69 FEET; THENCE SOUTH 7° 33' 08" EAST, 6594.175 FEET; THENCE SOUTH 5° 56' 02" WEST, 4183.44 FEET TO THE CENTER OF A BRASS DISK STAMPED "SOLANO COUNTY B.M."; LOCATED ON THE WESTERN EDGE OF CHADBOURNE ROAD APPROXIMATELY 206 FEET, MORE OR LESS, NORTHWESTERLY FROM THE NORTHWESTERN CORNER OF A CONCRETE BRIDGE CROSSING "WELLS SLOUGH"; THENCE SOUTH 21° 20' 25" EAST, 205.78 FEET TO THE CENTERLINE OF A BRASS DISK SET IN THE NORTHWESTERN CORNER OF THE CONCRETE BRIDGE DECK CROSSING WELLS SLOUGH; THENCE SOUTH 47° 15' 38" EAST, 2240.34 FEET, TO A POINT ON THE NORTHWESTERN LINE OF SAID SOUTHERN PACIFIC TRANSPORTATION COMPANY RIGHT-OF-WAY (100 FEET WIDE), AND THE ACTUAL POINT OF BEGINNING OF THE PARCEL OF LAND TO BE DESCRIBED; RUNNING THENCE ALONG THE LAST SAID RAILROAD RIGHT-OF-WAY, SOUTH 22° 34' 49" WEST, 73.60 FEET; THENCE SOUTH 66° 02' 55" EAST, 18.37 FEET; THENCE NORTH 22° 26' 44" EAST, 74.06 FEET TO A LINE DRAWN SOUTH 67° 31' 37" EAST FROM THE ACTUAL POINT OF BEGINNING; THENCE NORTH 67° 31' 37" WEST, 18.19 FEET TO THE ACTUAL POINT OF BEGINNING;

AND CONTAINING AN AREA OF 1,350 SQUARE FEET, MORE OR LESS.

END OF
DOCUMENT

